

I have listed some realities that I have witnessed personally since the change in NLRB election procedures which do not benefit the employer or employees. It does benefit the union which is not what the NLRA or NLRB is about as neither is designed to be a union support mechanism. The NLRA gives rights to employees, employers and unions alike. The NLRB is an agency that is supposed to be neutral and enforce the NLRA fairly without prejudice.

It is my opinion that the NLRB should revert back to the old rules of Elections prior to the "Ambush Election" rules were adopted.

Reasons include:

- Most business owners (especially small and medium sized businesses) that are facing NLRB petitions have no real knowledge of the NLRA, NLRB, Union Organizing Campaigns and the election process.

They need to educate themselves, hire attorneys and get themselves prepared while the unions already understand the NLRA, NLRB, Union Campaigns and the election process and have already had months to talk to employees to get the necessary amount of authorization cards signed to hold an election.

- Under the current law the unions can make various statements to employees misleading them as to what to expect with union representation and outcomes of contract negotiations. It is not fair to the employees to not have time to hear from both the union and the employer and make a true educated choice based on facts, opinions and experience so long as the employer does not commit a ULP in doing so.
- Business owners are often hit with the reality that they have made poor decisions and have a natural instinct to try and correct their mistakes which usually result in unfair labor practices. They often need guidance and an education themselves to keep laboratory like conditions throughout the union campaign process. This holds true especially in small and medium size companies. They need to address this immediately but instead have to jump into the fire and begin gathering information for the NLRB instead of learning their own rights.
- Most companies end up in a situation where they have an all-hands on deck approach trying to obtain all the information required to be submitted to the NLRB including personal emails which are rarely used for business purposes. In this case boxes of paper resumes and hundreds if not more online submitted resumes must be reviewed to obtain personal email addresses which more times than not are not stored on their computer systems for a "one-touch" report. On top of this review, all of the supervisors must be asked to review their cell phones for any email or cell numbers they have in their personal possession.
- Many times, business owners don't have an understanding of what constitutes a supervisor under the NLRB's guidelines vs. their own internal "hierarchy" which do not always align and

which is something that is discussed with legal counsel so that the right potential unit is submitted to the NLRB.

With the new rules, it is possible that a potential bargaining unit member is considered to be an employee by the company but meets the supervisory guidelines under the NLRB. If they are not deemed to the appropriate status an unnecessary ULP can be filed even though there was no malicious intent when they start attending union meetings (out of ignorance).

This is very common with “Team Leader” positions. Employers need time to ensure the list provided to the NLRB is accurate it avoids unnecessary time on the NLRB’s behalf with frivolous ULP cases.

- Business owners and employees alike feel that giving personal information that ends up in the union’s hands is a clear invasion of privacy. The union has a long history of obtaining that information prior to the rule change if they want to work for it then that is fine, but the employees will still see it as an invasion of privacy just as they do when the union shows up at their home to talk to them under the old rule when the Excelsior list is handed over. The addition of cell phone numbers and personal email addresses makes them feel more vulnerable.
- Many small and medium sized businesses retain an employment attorney with little to no experience with the NLRB and are referred to a labor attorney with experience. The union knows that the less time they must prepare, the less time business owners/leaders have to interview and choose an attorney that they are comfortable working with. They need to have more time to prepare and with no previous experience working together moving through the process to meet the NLRB’s requests for information can often become a process that is done haphazardly and lead to ULP’s that could be avoided if they had the time to respond appropriately.
- The employee education process about unions takes time. The employer must choose between producing and meeting with their employees. This puts pressure on the employees when they are pulled from the job more frequently to get through all the education in 21 days vs. a less rigorous meeting schedule with the old system. Under a 21-day union campaign, the education process often almost becomes a constant series of meetings and conversations with employees which often leads to a severe decrease in production which puts the company in jeopardy which also puts jobs in jeopardy. Not because of the union’s organizing attempt but because their clients don’t really care if there is a union campaign or not. Their clients want deliverables. If a company in a union campaign loses clients, then the union will not be able to protect lost jobs if positions are not available due to lost revenue streams and jobs. Lost positions and lost revenue negates one of the reasons employees seek out unions in the first place. This puts the employer in a very unfair position. They either have to produce or ensure that their employees vote with all of the facts at their disposal so that they can make an educated vote.
- Employees deserve the ability to make an educated choice when they approach the voting booth. They should be able to do this without fear of reprisal from the union, co-workers or

their employer. When an employee approaches the voting booth with all the facts presented by both the union and the employer they have the freedom to cast their ballot privately with assurance that they are voting for what they believe is in their best interest and the best interest of their families. For this to be accomplished the employer must have enough days to provide factual data, opinions and experiences to the employees. While it is possible to provide employees with this information in a 21-day period, they are often left jaded if they are constantly pulled away from their job and “educated” by their employer. There should be enough time for employees to truly digest the information, ask questions to both the union and the employer and vote with their hearts and minds.

Whatever is done should be done to equalize the playing field. Employers hold educational meetings with employees and this should be done without fear and intimidation tactics and based on verifiable factual information. The unions hold meetings, make house calls and have employees meet on non-work times and non-work places. The union has held a long-standing advantage of having the ability to meet secretly with employees long before the employer knows about union activity. Shortening the time frame for an employer to present their case only gave the union a bigger advantage. That is not equalizing the playing field.

Change the rules back to what they were before 2015 which negatively impacted years of established labor law if the NLRB wants to be viewed as an impartial and neutral agency. The old system was still tilted in the union’s favor, at least reverting back is a starting point to somewhat leveling the rules of engagement during a union campaign.